

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

**CALLIDUS CAPITAL
CORPORATION**

Plaintiff,

v.

Civil Action No. 1:14-cv-00270

**ESCO MARINE, INC., ESCO
METALS, LLC, ESCO SHREDDING,
LLC, TEXAS BEST RECYCLING,
LLC, TEXAS BEST EQUIPMENT,
LLC, RICHARD JAROSS, EMJ
HOLDINGS, LLC, ELKA JAROSS,
ANDREW LEVY, REDSTONE
CAPITAL CORP., ALBERTO
GARCIA, and JOHN KRISTOPHER
WOOD,**

Defendants.

DECLARATION OF CRAIG L. BOYER

I, CRAIG L. BOYER, declare:

1. My name is Craig L. Boyer. I am over the age of twenty-one years. I reside in Toronto, Ontario. I have never been convicted of a felony or a crime of moral turpitude. I am Vice President of Callidus Capital Corporation (“Callidus”), a company that offers financing solutions for companies that are unable to obtain adequate financing from conventional lending institutions. I am primarily responsible for the loan and security documents that are the subject of this action, and I have personal knowledge of the facts stated in this declaration.

2. I have read the facts stated in Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction. The facts stated therein are true and correct.

3. Attached as Exhibit A-1 is a true and correct copy of the Loan Agreement.

EXHIBIT A

4. Attached as Exhibit A-2 is a true and correct copy of the Guaranty of Richard Jaross, Elsa Jaross, and EMJ Holdings, LLC, jointly and severally.
5. Attached as Exhibit A-3 is a true and correct copy of the Guaranty of Andrew Levy and Redstone Capital Corp., jointly and severally.
6. Attached as Exhibit A-4 is a true and correct copy of the Security Agreement.
7. Attached as Exhibit A-5 is a true and correct copy of the Deed of Trust.
8. Attached as Exhibit A-6 is a true and correct copy of the Leasehold Deeds of Trust.
9. Attached as Exhibit A-7 is a true and correct copy of the Demand Facility Notes.
10. Attached as Exhibit A-8 is a true and correct copy of the First Amendment to Loan Agreement.
11. Attached as Exhibit A-9 is a true and correct copy of the Esco Marine and Subsidiaries Consolidated Financial Statements and Independent Auditors Report for December 31, 2013 and 2012.
12. Attached as Exhibit A-10 is a true and correct copy of the Callidus Statement as of July 2, 2014.
13. Attached as Exhibit A-11 is a true and correct copy of the Duff & Phelps Memorandum (Aug. 27, 2014).
14. Attached as Exhibit A-12 is a true and correct copy of the E-mail from Kris Wood (Oct. 15, 2014).
15. Attached as Exhibit A-13 is a true and correct copy of the E-mail between Kris Wood and Nhan Tri Vu (Oct. 17, 2014).

16. Attached as Exhibit A-14 is a true and correct copy of the E-mail from Kris Wood (Oct. 16, 2014).

17. Attached as Exhibit A-15 is a true and correct copy of the E-mail from Kris Wood (Oct. 28, 2014).

18. Attached as Exhibit A-16 is a true and correct copy of the E-mail from Kris Wood (Nov. 5, 2014).

19. Attached as Exhibit A-17 is a true and correct copy of the E-mail from Kris Wood (Nov. 6, 2014).

20. Attached as Exhibit A-18 is a true and correct copy of the E-mail from Kris Wood (Nov. 11, 2014).

21. Attached as Exhibit A-19 is a true and correct copy of the E-mail from Kris Wood (Nov. 7, 2014).

22. Attached as Exhibit A-20 is a true and correct copy of the E-mail from Nahn Tri Vu (Nov. 11, 2014).

23. Attached as Exhibit A-21 is a true and correct copy of the E-mail from Alberto Garcia (Nov. 12, 2014).

24. Attached as Exhibit A-22 is a true and correct copy of the E-mail from Nahn Tri Vu (Nov. 13, 2014).

25. Attached as Exhibit A-23 is a true and correct copy of the E-mail from Craig Boyer (Nov. 13, 2014).

26. Attached as Exhibit A-24 is a true and correct copy of the E-mail from Andrew Levy (Nov. 13, 2014).

27. Attached as Exhibit A-25 is a true and correct copy of the E-mail from Kris Wood (Dec. 2, 2014).

28. Attached as Exhibit A-26 is a true and correct copy of the Duff & Phelps Memorandum (Nov. 26, 2014).

29. Attached as Exhibit A-27 is a true and correct copy of the Reconciliation of Disbursement Account Transactions for November, 2014.

30. Attached as Exhibit A-28 is a true and correct copy of the Reconciliation of Disbursement Account Transactions for December, 2014.

31. Attached as Exhibit A-29 is a true and correct copy of the December 7, 2014 Weekly Borrowing Base Report.

32. Attached as Exhibit A-30 is a true and correct copy of the Callidus Statement as of January 2, 2015.

33. Attached as Exhibit A-31 is true and correct copy of the Engagement Letter between Esco Marine, Inc. and Duff & Phelps Canada Restructuring Inc.

34. Callidus' collateral has been misappropriated by Esco Marine, Inc., Esco Metals, LLC, Esco Shredding LLC, Texas Best Recycling, LLC, and Texas Best Equipment, LLC (collectively, "Esco"). In direct violation of the loan agreement, Esco and its management, including Defendants Richard Jaross, Andrew Levy, Alberto Garcia, and John Kristopher Wood, have received funds without depositing them into the Blocked Account. As detailed in the motion, this activity is ongoing, demonstrating that the harm of continued loss of Callidus' secured position through collateral dissipation is imminent. Without a temporary restraining order, Callidus faces irreparable harm because it is losing the security for which it bargained in

the lending agreements. Further, given Esco's precarious financial condition, as detailed in the motion, Esco would be unable to pay a judgment for the amounts Callidus is owed.

I declare under penalty of perjury of the laws of the United States of America (28 U.S.C. § 1746) that the foregoing is true and correct.

Executed on January 7, 2015.



Craig L. Boyer